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No. 90-917

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1990

KATHLEEN A. LAUGHLIN, TRUSTEE, PETITIONER

v.

INTERNAL REVENUE SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the United States may be enjoined from serving a notice of levy upon a bankruptcy trustee where the government seeks to obtain property that the bankruptcy court has, pursuant to a confirmed plan, ordered to be paid to an administrative claimant who is a delinquent taxpayer.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	4
Conclusion	8

TABLE OF AUTHORITIES

Cases:

Bob Jones University v. *Simon*, 416 U.S. 725 (1974)	4
Clark v. *United States*, 851 F.2d 104 (4th Cir. 1988)	7-8
Enochs v. *Williams Packing Co.*, 370 U.S. 1 (1962)	4
Fidelity Mortgage Investors v. *Camelia Builders, Inc.*, 550 F.2d 47 (2d Cir. 1976), cert. denied, 429 U.S. 1093 (1977)	5
Frigitemp Corp., In re, 8 Bankr. 284 (S.D.N.Y. 1981)	5
Holtkamp v. *Littlefield*, 669 F.2d 505 (7th Cir. 1982)	5
Hunt v. *Bankers Trust Co.*, 799 F.2d 1060 (5th Cir. 1986)	5
Meter Maid Industries, Inc., In re, 462 F.2d 436 (5th Cir. 1972)	3, 6, 7
Midlantic Nat'l Bank v. *New Jersey Department of Envt'l Protection*, 474 U.S. 494 (1986)	7
Pursifull v. *Eakin*, 814 F.2d 1501 (10th Cir. 1987)	5
Quakertown Shopping Center, Inc., In re, 366 F.2d 95 (3d Cir. 1966)	3, 5, 7
South Carolina v. *Regan*, 465 U.S. 367(1984)	4

Cases—Continued: Page

United States v. *American Friends Service Committee*, 419 U.S. 7 (1974) 4
United States v. *Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989) 7

Statutes:

Anti-Injunction Act, 26 U.S.C. 7421(a) 4
Internal Revenue Code of 1986 (26 U.S.C.):
§ 1398 7
§ 6331 4
§ 7421 3
Bankruptcy Code, 11 U.S.C. 101 *et seq.*:
11 U.S.C. 346 7
11 U.S.C. 362 ..... 2, 4, 5
11 U.S.C. 362(a) 3, 8
11 U.S.C. 1327(b) 3
28 U.S.C. 960 6

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-19) is reported at 912 F. 2d 197. The opinion of the district court (Pet. App. 23-29) is reported at 98 Bankr. 494. The opinion of the bankruptcy court (Pet. App. 31-39) is reported at 98 Bankr. 490.

JURISDICTION

The judgment of the court of appeals was entered on August 15, 1990. A petition for rehearing was denied on September 25, 1990. Pet. App. 22. The petition for a writ of certiorari was filed on December 10, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. On January 5, 1988, Kathleen A. Laughlin, a Chapter 13 trustee for the District of Nebraska (the trustee), was served with a notice of levy by the Internal Revenue Service to obtain all property or funds owed to Michael J. and Deanne Elsken. Pet. App. 2, 23. The levy was issued for the purpose of enforcing outstanding tax assessments against the Elskens. Pet. App. 2. Upon receiving the levy, the trustee searched her records and discovered three bankruptcy cases in which money was owed to Mr. Elsken (taxpayer) as administrative expenses authorized for his work as an attorney in those cases. Pet. App. 2-3. In two of the cases, the bankruptcy plans had been confirmed by the court and the payments were due Mr. Elsken; in the third, the plan had not been confirmed as of the date of the levy. Pet. App. 3. The parties agreed that the levy would not apply to the funds from the third case. *Ibid.*

2. The trustee moved the bankruptcy court to impose sanctions against the IRS for violating the automatic stay provisions of the Bankruptcy Code, 11 U.S.C. 362.[1] The bankruptcy court denied the trustee's motion and held that the automatic stay was not violated. Pet. App. 39. The court concluded that when a Chapter 13 plan is confirmed, the trustee holds any property (including those amounts the trustee uses to pay the creditors and administrative expense claimants) only as a disbursing agent. Because the property to be disbursed by the trustee after plan confirmation is no longer property of the estate, the automatic stay provisions

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[1] The parties agreed that, pending the outcome of this case, the trustee would pay to the bankruptcy court the monies due Mr. Elsken for which the IRS had served a levy. The IRS agreed not to take any additional collection actions against the trustee during the pendency of this action.

of the Bankruptcy Code do not apply, and the IRS therefore did not violate them. Pet. App. 36-37.[2]

3. The district court affirmed. Pet. App. 30. The court agreed that, after confirmation of a bankruptcy plan, the property revests in the debtor pursuant to 11 U.S.C. 1327(b), and the automatic stay is no longer applicable. The district court therefore ruled that the property upon which the IRS sought to levy was not property of the estate and that the IRS thus did not violate the automatic stay when it issued the levy. Pet. App. 28-29.

4. A divided panel of the court of appeals affirmed. The court noted that two other courts of appeals had previously affirmed the right of the government to levy on a bankruptcy trustee in similar circumstances, where the government's claim is asserted against a *creditor* rather than against the debtor. Pet. App. 5, citing *In re Meter Maid Industries, Inc.*, 462 F.2d 436 (5th Cir. 1972); *In re Quakertown Shopping Center, Inc.*, 366 F.2d 95 (3d Cir. 1966). The court held that, when the government's claim is not aginst the debtor, "the levy [does] not invade the jurisdiction of the bankruptcy court or interfere with the administration of the estate." Pet. App. 5. No violation of the automatic stay thus occurred. Pet. App. 6-7.

5. In dissent, Circuit Judge Magill stated that the case should be controlled by the terms of Section 362(a), which

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[2] The trustee had also requested the court to require the IRS either to provide the trustee with more information regarding the taxpayers upon whose property the IRS seeks to levy or to file adversary proceedings to determine its rights in the property. The court concluded that the Anti-Injunction Act, 26 U.S.C. 7421, prevented it from interfering with the manner in which the IRS collects the taxes owed it, at least where the IRS is not seeking to collect taxes owed by the debtor. Pet. App. 37-39. The court therefore denied the trustee's motion. This ruling was upheld on appeal. Pet. App. 7, 29. Petitioner does not seek review of this aspect of the decision of the courts below.

provides that the filing of a bankruptcy petition "operates as a stay, applicable to all entities, of * * * (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." Pet. App. 9. He regarded the funds in the trustee's hands after confirmation as property of the estate and, therefore, protected by the stay. Pet. App. 12-15. He also concluded that Section 362 was intended to supersede the Anti-Injunction Act. Pet. App. 18.

ARGUMENT

The decision in this case is correct and is not in conflict with decisions of other circuits. The two other courts of appeals that have addressed this same question have reached the same conclusion reached here. There is, accordingly, no reason for further review.

1. Section 6331 of the Internal Revenue Code provides that the IRS may, to collect unpaid taxes, levy upon any property or rights to property belonging to the taxpayer. The Anti-Injunction Act, 26 U.S.C. 7421(a), provides that "[e]xcept as [otherwise] provided * * *, no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." As this Court has recognized, the Act must be given a comprehensive effect to accomplish its primary objective of protecting the tax collection process from premature judicial interference pending a suit for refund. *Enochs* v. *Williams Packing Co.*, 370 U.S. 1, 7-8 (1962); *United States* v. *American Friends Service Committee*, 419 U.S. 7, 12 (1974); *Bob Jones University* v. *Simon*, 416 U.S. 725, 736-737 (1974); *South Carolina* v. *Regan*, 465 U.S. 367, 386 (1984) (O'Connor, J., concurring in the judgment). Were this not a bankruptcy case, there would obviously

be no doubt that the IRS could levy upon the property of the taxpayer.

The automatic stay provisions of the Bankruptcy Code, 11 U.S.C. 362, prevent a creditor from attempting to collect a pre-petition debt from a debtor who has filed under the bankruptcy laws. These provisions were enacted to provide for an orderly administration of the estate and to ensure that all creditors and claimants will share fairly in the debtor's assets. See, *e.g.*, *Hunt* v. *Bankers Trust Co.*, 799 F.2d 1060, 1069 (5th Cir. 1986); *Holtkamp* v. *Littlefield*, 669 F.2d 505, 508-509 (7th Cir. 1982); *Pursifull* v. *Eakin*, 814 F.2d 1501, 1504 (10th Cir. 1987). Among other things, the automatic stay prevents a "chaotic and uncontrolled scramble for the debtor's assets in a variety of uncoordinated proceedings in different courts." *In re Frigitemp Corp.*, 8 Bankr. 284, 289 (S.D.N.Y. 1981), citing *Fidelity Mortgage Investors* v. *Camelia Builders, Inc.*, 550 F.2d 47, 55 (2d Cir. 1976), cert. denied, 429 U.S. 1093 (1977).

In this case, the IRS levied not to collect taxes owed by the debtor, but to collect taxes owed by an individual holding an administrative expense claim against the estate. The individual's claim against the estate had already been allowed and the bankruptcy court had already authorized disbursement of the funds. The notice directed the trustee to pay to the IRS, rather than to the individual, the funds that the estate owed that individual.

Sending a levy notice to a bankruptcy trustee in these circumstances does not violate the automatic stay provisions of the Bankruptcy Code. As the Third Circuit held in rejecting a similar argument in *In re Quakertown Shopping Center, Inc.*, "[w]e are here on familiar ground" (366 F.2d at 98):

> In making a levy such as this the United States becomes in effect the involuntary assignee of the creditor. It does

> not invade the jurisdiction of the Bankruptcy Court or interfere with the administration of the estate. It merely serves notice on the receiver or trustee that whatever funds otherwise would be paid to the taxpayer shall instead be paid to the government as the distrainor, to the extent of the amount due it. We are here on familiar ground. A creditor may voluntarily transfer his claim against a bankrupt estate without obtaining the approval of the Bankruptcy Court. 3 Collier on Bankruptcy (14th ed. 1966), § 57.06. We deem the levy to be similar in effect to an assignment, albeit involuntary on the part of the creditor of the bankrupt.

Accord *In re Meter Maid Industries, Inc.*, 462 F.2d at 438.[3] As the *Quakertown* court recognized, the serving of the levy neither invades the jurisdiction of the bankruptcy court nor interferes with the administration of the estate; it is only after the court has approved payment to the claimant that the IRS seeks to have its levy honored. The debtor's estate is neither enlarged nor diminished by honoring the levy, and the debtor's rehabilitation is unaffected.

It is not a violation of the automatic stay to require the trustee to obey the revenue laws to the extent of honoring the federal tax levy on the funds awarded to the bankruptcy claimant. See note 2, *supra*. Several statutes expressly require the trustee to obey the tax laws. See 28 U.S.C. 960 (providing that all officers and agents conducting business under the authority of a United States court, a definition that includes bankruptcy trustees, are subject to all federal, state and local taxes to the same extent as if an individual

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[3] Both *Quakertown* and *Meter Maid* were decided under the Bankruptcy Act, prior to enactment of the Bankruptcy Code. As the court of appeals correctly concluded (Pet. App. 5-7), nothing in the Bankruptcy Code alters the applicability of those decisions to the question presented in this case.

or corporation were conducting the business); 26 U.S.C. 1398; 11 U.S.C. 346. As this Court has observed on two separate occasions, nothing in the Bankruptcy Code grants the trustee "*carte blanche* to ignore nonbankruptcy law." *United States* v. *Ron Pair Enterprises, Inc.*, 489 U.S. 235, 244 (1989), quoting *Midlantic Nat'l Bank* v. *New Jersey Department of Envt'l Protection*, 474 U.S. 494, 502 (1986).

2. Petitioner's fears regarding the scope of the decision of the court of appeals (Pet. 10-11) are unfounded and stem apparently from a misreading of that decision. The decision in this case will not generally prevent a trustee from enforcing the automatic stay provisions. Pet. 10. Only after the bankruptcy court has approved a payment to a claimant may the IRS levy upon it. Nor will the decision in this case impair a debtor's ability to exercise his statutory option of modifying his rehabilitation plan or converting his case under Chapter 7, as petitioner contends (Pet. 11). Since the IRS may not levy upon the funds until after their payment has been approved by the court, the debtor's ability to exercise these options is not "impaired" prior to confirmation; after confirmation, the IRS levy no more impairs the debtor's options than would the actions of a trustee who dutifully pays the claims promptly upon approval. In sum, an IRS levy reaches only the property of the taxpayer. If the bankruptcy court has not yet approved payment of the bankruptcy claim of the delinquent taxpayer, there is no property to which the levy would apply.

3. There is no conflict among the circuits on the issue presented by this case. The decision below is consistent with, and directly supported by, the decisions of the other courts of appeals. See *In re Quakertown Shopping Center, Inc.*, 366 F.2d at 98; *In re Meter Maid Industries, Inc.*, 462 F.2d at 438. See also *Clark* v. *United States*, 851 F.2d 104 (4th

Cir. 1988).[4] Further review of the decision in this case is therefore not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[4] Petitioner argues (Pet. 13-15) that there is a conflict among various district and bankruptcy courts regarding the proper definition of the term "property of the estate" in 11 U.S.C. 362(a). As the court of appeals here concluded, however, it is unnecessary to address that question because the property subject to the levy is the claim of the creditor against the estate and not the assets of the debtor or the estate itself. Pet. App. 5-6. There is no conflict among the circuit or district courts on the question presented and decided by the court of appeals in this case.

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